No. 86-1524

Supreme Court, U.S.
FILED
APR 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1986

THOMAS E. MC GOVERN,

Appellant,

-vs-

STATE OF NEW JERSEY,

Appellee.

On Appeal from the Superior Court of New Jersey,
Appellate Division.

MOTION OF APPELLEE TO DISMISS [or AFFIRM]

JOHN A. KAYE
Monmouth County Prosecutor
Court House
Freehold, New Jersey 07728
(201) 431-7160

Attorney for Appellee

Of Counsel
Mark P. Stalford
Assistant Monmouth County
Prosecutor
Director Appellate Section

On the Brief
Patricia Mc Hale

THE SUPERIOR APPELLATE PRINTING COMPANY
P.O. Box 363
Cranbury, N.J. 08512
Area Code 609
443-4202

TABLE OF CONTENTS

Page

Statement.....2

Argument.....4

1. This court lacks the requisite jurisdiction pursuant to 28 U.S.C.S. §1257(2) over this appeal,in that, the Constitution of the United States, treaties or laws of the United States were not specifically raised by the Defendant nor addressed by the Superior Court of New Jersey, Appellate Division, in its decision upholding the validity of N.J.Rev. Stat. §39:4-50.....4

2. Because it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to require further argument, the State of New Jersey moves the Court to dismiss the appeal herein; or in the alternative, to affirm the judgment of the Superior Court, Appellate Division.....12

Conclusion.....26
Appendix.....27
N.J. COURT RULES 7:1 et. seq.
7:4 et. seq.
7:6 et. seq.
7:8 et. seq.

TABLE OF AUTHORITIES

Cases:

Air Pollution Variance Board v.
Western Alfalfa, 416 U.S. 861,
94 S.Ct. 2194 (1974).....8

Beck v. Washington,369 U.S. 541,
82 S.Ct. 955 (1962).....8

Bell v. Burson, 402 U.S. 535,
91 S.Ct. 1586 (1971)..... 13,17
18,19,23

Bowe v. Scott, 233 U.S. 658,
34 S.Ct. 769 (1914).....7

Breithaupt v. Abram, 352 U.S. 432,
77 S.Ct. 408 (1957).....16

Cardinale v. Louisiana,
394 U.S. 437
89 S.Ct. 1154 (1969).....6

Dixon v. Love, 431 U.S. 105,
97 S.Ct. 1723 (1977).....18,21
22,24

Hiawassee River Power Co. v.
Carolina-Tennessee Power Company,
252 U.S. 341, 40 S.Ct. 330 (1920)..10

Hicks v. Miranda, 422 U.S. 332,
95 S.Ct. 2281 (1975).....13

Kahn v. Shevin, 416 U.S. 351,
94 S.Ct. 1734 (1974).....14

Key v. Doyle, 434 U.S. 59,
98 S.Ct. 280 (1977).....5

Live Oak Ass'n v. Railroad
Commission, 269 U.S. 354,
46 S.Ct. 149 (1926).....10

Lynch v. New York ex.rel. Pierson,
293 U.S. 52, 55 S.Ct. 16.....10

Mackey v. Montrym, 443 U.S. 1
99 S.Ct. 2612 (1979).....15,18
19,20
21,22
23,24

Mathews v. Eldridge, 424 U.S. 319,
96 S.Ct. 893 (1976).....20,22

New York ex. rel. Bryant v.
Zimmerman, 278 U.S. 63,
49 S.Ct. 61 (1928).....7

New York Central & H.R.Co. v.
New York, 186 U.S. 269,
22 S.Ct. 916 (1902).....6

Perez v. Campbell, 402 U.S. 637,
91 S.Ct. 1704 (1971).....16

Powell v. Texas, 392 U.S. 514,
88 S.Ct. 2145 (1967), reh'g
denied 393 U.S. 898,
89 S.Ct. 65 (1968).....17

Rinaldi v. Yeager, 384 U.S. 305,
86 S.Ct. 1497 (1966).....14

Rummell v. Estelle, 445 U.S. 263,
100 S.Ct. 1133 (1980).....17

South Carolina v. Katzenbach,
383 U.S. 301, 86 S.Ct. 803 (1966)..14

South Dakota v. Neville,
459 U.S.553,
103 S.Ct. 916 (1983).....15,16

State v. Novembrino,
105 N.J. 95 (1986).....8,9

State v. Thomas McGovern,
No. A-954-85T4, slip op.
(N.J.Super. Ct. App. Div.
June 30, 1986).....10

Tate v. Short, 401 U.S. 395,
91 S.Ct. 668 (1971).....16

Taylor v. Kentucky, 436 U.S. 478,
98 S.Ct. 1930 (1978).....7

Thomas v. Iowa, 209 U.S. 258,
28 S.Ct. 487 (1908).....10

United States v. Harris,
347 U.S. 612, 74 S.Ct. 808 (1954)..14

Webb's Fabulous Pharmacies, Inc.
v. Beckwith, 449 U.S. 155,
101 S.Ct. 446 (1980) 7

White River Lumber Co. v.
Arkansas ex.rel. Applegate,
279 U.S. 692,
49 S.Ct. 457 (1929).....9

Whitney v. California,
274 U.S. 357, 47 S.Ct. 641 (1927)..9

Zucht v. King, 260 U.S. 174,
43 S.Ct. 24 (1922).....12,13

Statutes:

N.J. REV. STAT. §39:4-50.....2,3
4,17
21,24

N.J. REV. STAT. §39:4-96.....2

28 U.S.C.S. §1257(2).....4,5
11,12
13,26

Rules:

N.J.CT. Rule 7:1 et.seq.....21

N.J.CT. Rule 7:4 et.seq.....21

N.J.CT. Rule 7:6 et.seq.....21

N.J.CT. Rule 7:8 et.seq.....21

No. 86-1524

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

THOMAS E. MC GOVERN, APPELLANT

vs.

STATE OF NEW JERSEY, APPELLEE

ON APPEAL FROM THE SUPERIOR COURT OF
NEW JERSEY, APPELLATE DIVISION

MOTION OF APPELLEE TO DISMISS
[or AFFIRM]

Pursuant to Rule 16.1, the appellee State of New Jersey moves the Court to dismiss the appeal herein for want of jurisdiction, or in the alternative, to affirm the judgment of the Superior Court of New Jersey, Appellate Division, on the Ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to require further argument.

STATEMENT OF THIS CASE

On December 12, 1984, the defendant was arrested in the Borough of Freehold, Monmouth County, New Jersey, for driving under the influence of alcohol in violation of N.J.Rev. Stat. §39:4-50 and for reckless driving in violation of N.J.Rev. Stat. §39:4-96.

On July 1, 1985, the defendant entered a plea of guilty in the Freehold Borough Municipal Court. The reckless driving charge was merged into the driving under the influence charge. Because this was the defendant's third offense in a seven (7) month period, he was sentenced by the municipal court judge as a third offender. The judge imposed a fine of one thousand dollars, fifteen dollars court costs, one hundred dollars surcharge and revoked defendant's driving privileges for a period

of ten years, pursuant to N.J.Rev. Stat. §39:4-50(3). Additionally, the defendant was sentenced to 180 days incarceration which, based upon application of the defendant, was to be served as an in-patient in an alcohol treatment facility.

ARGUMENT

1. This Court lacks the requisite jurisdiction pursuant to 28 U.S.C.S. §1257(2) over this appeal in that the Constitution of the United States, treaties or laws of the United States were not specifically raised by the defendant nor addressed by the Superior Court of New Jersey, Appellate Division, in its decision upholding the validity of N.J.Rev. Stat. §39:4-50.

The defendant, in his jurisdictional statement, seeks to invoke the appellate powers of this Court by challenging the constitutionality of the mandatory sentencing provisions of New Jersey's Drunk Driving Statute. Specifically, the defendant proffers that the language of the New Jersey Court "clearly shows that the issues presented and rulings of the Court upholding the validity of the Statute, are of a nature to bring this case within the jurisdiction of the United States Supreme Court." Jurisdictional Statement for Appellant at 7.

However, a closer inspection of the per curiam opinion from which this appeal is taken shows that nowhere is reference made to the Constitution of the United States or to any federal treaties or laws. The State of New Jersey submits that the mere reference by defendant that the statute violates "due process of law" should not suffice to bring it within the jurisdictional ambit contemplated by 28 U.S.C.S. §1257(2).

The Supreme Court's mandatory appellate jurisdiction over state-court judgments under §1257 is "reserved for cases threatening the supremacy of federal law." Key v. Doyle, 434 U.S. 59, 69, 98 S.Ct. 280, 285 (1977). There are several policy considerations upon which this jurisdictional requirement is based. As an initial proposition, federal questions not raised in State Court are very likely to be reflected

by an inadequate record. Additionally, in a federal system, the State Courts should be given the first opportunity to consider "the applicability of State Statutes in light of [federal] constitutional challenge." Cardinale v. Louisiana, 394 U.S. 437, 439, 89 S.Ct. 1154 (1969). Finally, a properly posed federal question could still be foreclosed by an adequate and independent state ground making review of the federal issue unnecessary. Id. Therefore it remains well-settled that "it must be made to appear that some provision of the Federal, as distinguished from the State, Constitution was relied upon and that provision must be set forth." New York Central & H.R.Co. v. New York, 186 U.S. 269, 273, 22 S.Ct. 916, 917 (1902). When a claim is made that a state statute denies "constitutional rights" or violates "due process", it must be assumed

absent an express statement or clear intendment to the contrary that the defendant is relying upon the State Constitution. New York ex. rel. Bryant v. Zimmerman, 278 U.S. 63, 67, 49 S.Ct. 61, 63 (1928), Bowe v. Scott, 233 U.S. 658, 664-665, 34 S.Ct. 769, 771 (1914).

Of course it is equally clear that a simple failure to cite the proper constitutional provisions will not bar an action. Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 159, 101 S.Ct. 446, 449 n.5 (1980); Taylor v. Kentucky, 436 U.S. 478, 482, 98 S.Ct. 1930, 1933 n. 10 (1978). However, in both of the above-cited cases the Court was able to find sufficient basis for consideration of the federal issues in explicit reliance on the Federal Constitution somewhere in the State Court proceedings. Webb's Fabulous Pharmacies, Inc., supra, 449

U.S. 155, 159, 101 S.Ct. 446, 449 n.5.

The Court has never found ambiguous references to an amorphous concept of constitutionality or due process sufficient to invoke its obligatory appellate jurisdiction. Air Pollution Variance Board v. Western Alfalfa, 416 U.S. 861, 866, 94 S.Ct. 2114, 2116 (1974).

If a State Court does no more than interpret a State Statute without expressly considering such interpretation in light of a federal question, the Supreme Court of the United States should not review that decision. Beck v. Washington, 369 U.S. 541, 549-550, 82 S.Ct. 955, 959-960 (1962).

New Jersey Courts have historically not hesitated from basing their decisions, when being faced with constitutional challenges, or provisions of the New Jersey Constitution. See e.g., State v. Novembrino, 105 N.J. 95,

145-146 (1986). This is particularly true in the context of criminal prosecutions. As the Court stated:

> Our conclusion as to which of these courses to follow is strongly influenced by what we perceive to be the likely import of our decision on the privacy rights of our citizens and the enforcement of our criminal laws, matters of "particular state interest" then afford an appropriate basis for resolving this issue on independent state grounds. [See State v. Hunt, supra, 91 N.J. at 366. (Handler, J., concurring) ("A state constitution may also be employed to address matters of particular state interest.")].

State v. Novembrino, supra, 105 N.J. at 146. It is well-settled that the record must affirmatively show that the federal issue has been raised, White River Lumber Co. v. Arkansas ex.rel. Applegate, 279 U.S. 692, 700, 49 S.Ct. 457, 460 (1929); Whitney v. California, 274 U.S. 357, 362-63, 47 S.Ct.

641, 643-644 (1927); Hiawassee River Power Co. v. Carolina-Tennessee Power Company, 252 U.S. 341, 344, 40 S.Ct. 330, 331-332 (1920); Thomas v. Iowa, 209 U.S. 258, 28 S.Ct. 487 (1908); briefs and oral arguments cannot be used to establish a federal question where the opinion sought to be reviewed is silent. Live Oak Ass'n. v. Railroad Commission, 269 U.S. 354, 357-58, 46 S.Ct. 149, 150-151 (1926); Lynch v. New York ex. rel. Pierson, 293 U.S. 52, 54, 55 S.Ct. 16, 17 (1934).

The State submits that in the absence of express reliance by the New Jersey Superior Court, Appellate Division, in its per curiam opinion, State of New Jersey v. Thomas E. McGovern, No. A-954-85T4, slip op. (N.J.Super. Ct. App. Div. June 30, 1986), on any federal Constitutional provision the United States Supreme Court is without

jurisdiction, pursuant to 28 U.S.C.S. §1257(2),. to review the decision of the court, and as such this case should be summarily dismissed.

2. Because it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to require further argument, the State of New Jersey moves the Court to dismiss the appeal herein; or, in the alternative, to affirm the judgment of the Superior Court, Appellate Division.

The defendant seeks the review of the United States Supreme Court under 28 U.S.C.S. §1257(2). This statute provides that where the validity of a state statute is drawn in question as being repugnant to the United States Constitution and the judgment of the State Court upholds the validity of the statute, the Appellate jurisdiction of the United States Supreme Court may be invoked. Assuming, arguendo, the validity of N.J. Rev. Stat. §39:4-50 was upheld in the face of a federal Constitutional challenge, (See Point One); it is well-settled that review by the Supreme Court is not automatic. Zucht v. King, 260 U.S. 174, 175, 43 S.Ct. 24, 25 (1922). It is the duty of the Court to

decline jurisdiction, "whenever it appears that the constitutional question is not... substantial in character." Zucht v. King, supra, 260 U.S. at 176, 43 S.Ct. at 25. The substantiality requirement has not been departed from in the context of the Court's appellate jurisdiction under 28 U.S.C.S. §1257(2). Hicks v. Miranda, 422 U.S. 332, 344, 95 S.Ct. 2281, 2289 (1975).

Defendant essentially argues that the mandatory sentencing provisions of New Jersey's drunk driving statute violate due process of law because they impose a ten year license revocation period with no opportunity for reinstatement within those ten years. The defendant relied primarily upon Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586 (1971) for support of his proposition. The argument the defendant proffers is neither novel nor persuasive.

Legislative enactments are presumed to be constitutional; when a challenge to a statute is raised, every intendment favors constitutionality. United States v. Harris, 347 U.S. 612, 618, 74 S.Ct. 808, 812 (1954). While it is true that there cannot be unnecessary and excessive restrictions on the use of private property or the pursuit of useful activities, a legislative enactment must be upheld provided there is a rational nexus between the classification, or the means used, and a valid legislative purpose. Kahn v. Shevin, 416 U.S. 351, 94 S.Ct. 1734 (1974); Rinaldi v. Yeager, 384 U.S. 305, 86 S.Ct. 1497 (1966). Where the Legislature has approached a problem and devised a solution that is reasonable and based upon practical considerations, it must be upheld. South Carolina v. Katzenbach, 383 U.S. 301, 86 S.Ct. 803 (1966). The mandatory license

revocation for those convicted of driving while under the influence of alcohol is supported rationally by the policy considerations of the protection this statute affords the public from the dangers of drunken driving.

Indeed the Court has recognized the "compelling interest in highway safety," Mackey v. Montrym, 443 U.S. 1, 17-19, 99 S.Ct. 2612, 2620-2621 (1979), motivating legislative responses to the menace of the drunken driver.

In South Dakota v. Neville, 459 U.S. 553, 103 S.Ct. 916 (1983), the Court articulated its recognition of these concerns:

> The situation underlying this case -that of the drunk driver - occurs with tragic frequency on our nation's highways. The carnage caused by drunk drivers is well documented and needs no detailed recitation here. This Court, although not having the

> daily contact with the problem that the state courts have, has repeatedly lamented the tragedy. See Breithaupt v. Abram, 352 U.S. 432, 439, 77 S.Ct. 408, 412, 1 L.Ed.2d, 448 (1957) ("The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield"); Tate v. Short, 401 U.S. 395, 401, 91 S.Ct. 668, 672, 28 L.Ed.2d, 130 (1971)(BLACKMUN, J. concurring) (deploring traffic irresponsibility and the frightful carnage it spews on our highways"); Perez v. Campbell, 402 U.S. 637, 657 and 672, 91 S.Ct. 1704, 1715 and 1722, 29 L.Ed.2d, 233,(1971) (BLACKMUN, J. concurring)(footnote omitted)("the slaughter on the highways of this nation exceeds the death toll of all our wars").

South Dakota v. Neville, supra, 459 U.S. at 558, 103 S.Ct. at 920.

In the face of such substantial dangers to public safety, it is clearly within the province of the Legislature to mandate the penalties it deems necessary to adequately

deter this threatening behavior and protect the safety of the general public, including, incidentally, that of the intoxicated driver.

Mandatory sentencing provisions have been expressly approved by the Court as constitutionally proper. Rummell v. Estelle, 445 U.S. 263, 100 S.Ct. 1133 (1980). In view of the unambiguous language used in N.J. Rev. Stat. §39:4-50 evidencing the legislative goal to protect the public by removing presumptively unsafe drivers fron the road, there is no room for judicial construction. Powell v. Texas, 392 U.S. 514, 538, 88 S.Ct. 2145 (1967), reh'g denied 393 U.S. 898, 89 S.Ct. 65 (1968).

The defendant argues that the mandatory license revocation provision of N.J.Rev. Stat. §39:4-50 is violative of due process because it offers no opportunity for reinstatement. Defendant proffers Bell v.

Burson, supra, 402 U.S. 535, 91 S.Ct. 1586, in support of his argument, interpreting Bell as conferring an almost "fundamental right" to operate an automobile and as requiring some extraordinary measure of procedural process above that currently afforded the individual under the laws of New Jersey.

This treatment of Bell v. Burson is often used and has been repeatedly rejected by the Court. Mackey v. Montrym, supra, 443 U.S. 1, 11, 99 S.Ct. 2612, 2617; Dixon v. Love, 431 U.S. 105, 97 S.Ct. 1723 (1977). In Bell v. Burson, supra, the Court held that Georgia's Motor Vehicle Safety Responsibility Act did not afford the requisite procedural due process. The Georgia statute provided that the driver's license and registration of an uninsured motorist involved in an accident shall be suspended unless the motorist posted security for the amount of damage claimed by

the aggrieved party. However, this procedure was found violative of due process because it excluded any consideration of fault or responsibility previous to suspension. The Court determined that before the State could deprive an individual of his license, it must provide a procedure for determining the question of whether there was a reasonable possibility of a judgment being rendered against him. Bell v. Burson, supra, 402 U.S. at 543, 91 S.Ct. at 1591.

The Court in Mackey v. Montrym, supra, 443 U.S. 1, 99 S.Ct. 2612, addressed a similar challenge to the Massachusetts' statutory scheme providing for the administrative suspension of a license upon report of an arrest for operating a motor vehicle while under the influence of an intoxicating liquor, if the person arrested refused to submit to a breathalyzer after

having been informed that his license would be suspended. Mackey v. Montrym, supra, 443 U.S. at 5, 99 S.Ct. at 2613-2614. The Court applied the procedural due process analysis articulated in Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893 (1976) to find that the summary suspension procedure contained in Massachusetts' mandatory revocation statute was constitutional.

The Court found that the nature of the private interest involved is the driver's property interest in the continued possession and use of his license. Specifically, the Court assessed that interest when a license is revoked pending the outcome of a hearing. Mackey v. Montrym, supra. 443 U.S. 1, 11, 99 S.Ct. 2612, 2617. In balancing the effect of the summary action taken by the State against this private interest, the Court found that the weight of the interest involved did not

compel a conclusion that the procedure was unconstitutional. Mackey v. Montrym, supra, 443 U.S. at 12-13, 99 S.Ct. at 2617. In the instant case the procedure is not a summary administrative disposition based upon an arrest report, as in Mackey v. Montrym. Here, there is an opportunity for a full judicial hearing and the mandatory sentencing provisions are applicable only upon conviction. N.J.Rev. Stat. §39:4-50, N.J.CT.R. 7:1, et. seq., (jurisdiction of the municipal court); N.J.CT. R. 7:4 et. seq., (trial of offenses by the municipal court judge); N.J.CT. R. 7:6 et. seq., (traffic offenses); N.J.CT. R. 7:8 et. seq., (appeals).

The adversary process,long considered by the Court to be best means of ascertaining the truth and minimizing the risk of erroneous deprivation of a private interest, Dixon v. Love, supra, 431 U.S. 105, 113, 97

S.Ct. 1723,1728, is fully available to any individual charged with a violation of New Jersey's drunk driving statute. In this instance, the defendant chose not to exercise his right to trial and pleaded guilty. (Jurisdictional Statement p.4).

The last component of the Eldridge balancing test requires an identification of the governmental function involved, the State's interest in the procedures used, as well as the administrative and fiscal burdens of a substitution of the procedures sought. Mackey v. Montrym, supra, 443 U.S. at 17-19, 99 S.Ct. at 2620-2621, Dixon v. Love, supra, 431 U.S. 105, 97 S.Ct. 1723.

As repeatedly acknowledged by the Court, the type of statute enacted in aid of the State's police function for the purpose of "preserving the safety of its public highways, standing alone, fully distinguishes

this case from Bell v. Burson [citation omitted]." Mackey v. Montrym, supra, 443 U.S. at 17, 99 S.Ct. at 2620.

Additionally, that interest in public safety is substantially served by the mandatory nature of the license revocation. A mandatory penalty serves as a strong deterrent to drunken driving, by promptly removing such drivers from the road a higher degree of safety on the highways is insured. Mackey v. Montrym, supra, 443 U.S. at 18, 99 S.Ct. at 2621.

The defendant recommends as an alternative to a mandatory revocation some future opportunity for reinstatement. Certainly the legislature had the opportunity tc consider this alternative as they framed this statute. The State, for policy reasons of its own, elected to enact an automatic penalty to be incurred by those who are third

or subsequent offenders under N.J.Rev. Stat. §39:4-50; this Court has traditionally accorded the States great leeway in adopting mandatory procedures to protect public health and safety. Mackey v. Montrym, supra, 443 U.S. at 117, 99 S.Ct. at 2620.

Additionally, it is by no means clear that a case-by-case discretionary process based upon assessments of individual "rehabilitation" would be the best way to assure either procedural or substantive fairness. Objective mandatory penalties provide all drivers with "more precise notice of what conduct will be sanctioned and promotes equality of treatment among similarly situated drivers." Dixon v. Love, supra, 431 U.S. 105, 115, 97 S.Ct. 1723, 1729.

The potential loss of employment is a heavy consequence indeed. The State would

submit that this consequence is not the result of a deprivation of due process on the part of the State, but instead is the consequence of operating an automobile while under the influence of alcohol, and in the defendant's case, doing so repeatedly. The consequences of that unlawful activity must be borne by the offender, not the citizens of New Jersey.

CONCLUSION

Therefore, the State of New Jersey respectfully submits that this Court lacks the requisite jurisdiction, pursuant to 28 U.S.C.S. §1257(2) over this appeal. Additionally, the Appellee respectfully moves the Court to dismiss this appeal, or in the alternative, to affirm the judgment entered in the cause by the Superior Court of New Jersey, Appellate Division, in that, the question upon which the case depends is so unsubstantial as not to require further argument.

Respectfully submitted,

JOHN A. KAYE
MONMOUTH COUNTY PROSECUTOR
ATTORNEY FOR APPELLEE

By: Mark P. Stalford
Assistant Prosecutor
Director Appellate Section
Of Counsel

Patricia McHale
On the Brief

APPENDIX

APPENDIX

RULES GOVERNING PRACTICE IN THE MUNICIPAL COURTS

RULE 7:1 SCOPE

The rules in Part VII, together with the rules in Part III, insofar as applicable and unless unless otherwise expressly provided by law or these rules, govern the practice and procedure in all criminal, quasi-criminal and penal actions in the municipal courts and all such actions transferred from a municipal court to the Superior Court, Chancery Division,Family Part pursuant to R.5:1-2(c)(3) and R. 5:1-3(b)(2). Whenever approval is given for the exercise of such jurisdiction by a county district court,the court may be divided by the Chief Justice into parts for separate hearing of civil and criminal matters.

RULE 7:4-1 Applicability·

Except as otherwise provided by R.7:6 (Traffic Offenses) and 7:7 (Violations Bureau) the provisions of R.7:4 apply to the trial by the court of all complaints charging offenses within its trial jurisdiction and all indictable offenses triable by it upon the defendant's waiver of indictment and trial by jury.

RULE 7:4-2 Proceedings Before Trial

(a) Arraignment

(1) Except as otherwise provided by paragraph (2) of this rule, arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to him the substance of the charge, and calling on him, after he is given a copy of the complaint to plead thereto. The defendant may waive the reading of the complaint.

RULE 7:4-5 Record of Proceedings; Transcripts

(a) Record. When required by order of the Supreme Court, a court shall cause all proceedings to be recorded by sound recording equipment or by a reporter. When sound recording equipment is used, in addition thereto, or when the proceedings are not otherwise to be recorded, at the request and expense of any party the court shall permit a record of the proceedings to be made by a certified shorthand reporter. Every sound recording and stenographic record of proceedings made pursuant to this rule shall be kept by the clerk of the court or by the reporter, as the case may be, for three years.

(b) Transcript. If the pro-

ceedings have been sound recorded, any person may order a transcript from the clerk of the court, and if proceedings have been recorded stenographically any person may order a transcript from the reporter. In either instance the charge therefor shall not exceed the transcript rates as provided by law. The person preparing a transcript shall certify to its accuracy.

(c) Supervision. The recording of proceedings and the preparation of transcripts thereof, whether by sound recording or stenographic reporters, shall be subject to the supervision and control of the Administrative Director of the Courts.

RULE 7:4-6 Sentence and Judgment

(a) Sentence. If the defendant has been convicted or pleaded guilty to an indictable offense, the court may postpone imposition of a sentence for a period not exceeding 30 days in order to obtain a presentence investigation from the chief probation officer of the county. If the defendant has been convicted or pleaded guilty to a non-indictable offense, sentence shall be imposed immediately unless the court postpones sentencing for a period not exceeding 30 days in order to obtain a presentence report or for other good cause.

(b) Judgment. A judgment of conviction shall set forth the complaint, the plea, the findings, the adjudication and sentence. It shall contain the number of the section and the title or a reasonably short description of the statute or ordinance under which conviction was had, the names and addresses of the witnesses sworn and a list of exhibits produced at the trial. If the defendant is found not guilty or for any other reason is entitled to be discharged, the judgment shall be entered accordingly. The judgment shall be signed by the court and entered by the clerk. If at the time of hearing judgment is rserved, the court upon the entry of judgment of acquittal shall forthwith mail a copy thereof to the defendant by ordinary mail; otherwise, the defendant shall be notified to appear for entry of judgment and sentencing.

(c) Reasons for Sentence. The provisions of R.3:21-4(e) shall apply to the municipal courts.

(d) Conviction of a Corporation. R.3:21-6 is applicable in the event of a conviction of a corporation.

(e) Probation. A convicted defendant may be placed on probation in accordance with R.3:21-7. The order of the court

shall refer to the standard conditions filed with the Superior Court.

(f) Credit for Confinement Pending Sentence. R.3:21-8 is applicable in the event a defendant has been in custody prior to the imposition of a custodial sentence.

(g) Correction or Reduction of Sentence. The provisions of R.3:21-10 (change or reduction of sentence) shall apply to the municipal courts.

(h) Identification Following Conviction. The court may order a person convicted of a non-indictable offense to submit to the taking of fingerprints when the identity of the person is in question.

RULE 7:4-7 New Trial.

The court may, on defendant's motion, grant him a new trial if required in the interest of justice. The court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before, or within 2 years after, final judgment. A motion for a new trial based on other grounds shall be made within 10 days after the

entry of judgment of conviction, or within such further time as the court fixes during the 10-day period. In no event shall this rule be construed to limit the right of a defendant to apply to the court for a(new trial on the ground of fraud or lack of jurisdiction

RULE 7:6-1 Complaint and Summons

(a) Form. In cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles,hereinafter designated as "traffic offenses", the complaint and summons shall be a uniform traffic ticket in the form prescribed by the Administrative Director of the Courts. On a complaint and summons for a non-moving traffic offense, in lieu of the name of the defendant it shall be sufficient to set forth the license number of the vehicle involved, and it shall be presumed that the owner of the vehicle is the defendant charged with the violation.

(b) Issuance. The complaint may be made and signed by a law enforcement officer, or by any other person, but the summons shall be signed and issued only by such officer, or the judge, clerk or deputy clerk of the court in which the complaint is, or is to be filed. R.7:3 relating to

warrants and summons in respect of nonindictable offenses generally, shall be applicable to cases involving a traffic offense, except as otherwise herein provided.

(c) Records and Reports. Each court shall be responsible for all uniform traffic tickets printed and distributed to law enforcement officers or others in his municipality, and for their proper disposition, and shall prepare or cause to be prepared such records and reports relating to such uniform traffic tickets as the Administrative Director of the Courts proscribes. The provisions of this paragraph shall also apply to the Director of the Division of Motor Vehicles and the Superintendent of State Police, in the Department of Law and Public Safety and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the uniform traffic ticket to its law enforcement personnel.

RULE 7:8-1 Appeals

Appeals from judgments of conviction shall be taken in accordance with R.3:23 and 3:24, and in extraordinary cases and in the interests of justice, in accordance with R.2:2-3(b).

RULE 3:24. APPEALS FROM ORDERS IN COURTS OF LIMITED CRIMINAL JURISDICTION

(a) Either the prosecuting attorney or the defendant may seek leave to appeal to the Superior Court, Law Division from an interlocutory order entered before trial by a court of limited criminal jurisdiction.

(b) The prosecuting attorney may appeal a pre-trial or post-trial judgment of a court of limited criminal jurisdiction dismissing a complaint.

(c) Appeals pursuant to this rule shall be taken within 10 days after the entry of such order by filing with the Superior Court, Law Division in the county of venue a notice of motion for leave to appeal under paragraph (a) or the notice of appeal under paragraph (b). A copy of the notice shall be filed with the clerk of the court below, and a copy thereof shall be served on the prosecuting attorney as defined by R.3:23-9 or on the defendant or his attorney, as appropriate, at least 10 days prior to the return date fixed therein. The original filed with the court and the copy served shall have annexed thereto copies of all papers of record and any affidavits essential to the determination of the motion and

shall be accompanied by a brief. The respondent shall file and serve his answering brief and other papers in opposition at least 3 days before the hearing. With respect to interlocutory applications, the court may grant or deny leave to appeal on terms and may elect simultaneously to grant the motion and decide the appeal on the merits on the papers before it, or it may direct the filing of additional briefs or make such other order as it deems appropriate for the expeditious disposition of the matter. A copy of any order or judgment entered by it shall be promptly transmitted to the clerk of the court below.